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EMBARGOED UNTIL 12.10.18 at 12PM

December 10, 2018

The Honorable Kirstjen Nielsen
Secretary of Homeland Security
Department of Homeland Security
245 Murray Lane, SW
Washington, D.C. 20528

Re: Proposed Inadmissibility on Public Charge Grounds Rule (Docket No. USCIS-2010-0012)

Dear Secretary Nielsen:

I write to express my strong opposition to the Inadmissibility on Public Charge Grounds Rule proposed by the Department of Homeland Security (DHS), which would make dramatic changes to current policy for determining whether a person is or may be likely to become a "public charge" and therefore must be ineligible for adjustment of immigration status or admission to the United States. Immigrants play a vital role in sustaining the economy, culture, and civic life of the Commonwealth of Massachusetts. The public charge rule that DHS has proposed will put all of these contributions at risk by creating powerful disincentives for immigrants to make use of government programs that are intended to help all persons lawfully present in our country achieve economic self-sufficiency and well-being.

Today, six Massachusetts State agencies have submitted comments detailing the significant harm DHS's proposed rule would pose to more than 500,000 Massachusetts residents who are lawfully present immigrants. By dramatically expanding consideration of an immigrant's use of public supports and making even modest reliance on those supports a strong negative factor in the public charge determination, the rule will lead lawfully present immigrants to disenroll from programs that support health, nutrition, and housing stability for low income families. Experience shows that many immigrants legally entitled to these supports will likely decline to participate even if they do not fall within the scope of the proposed rule, partly out of confusion and partly out of fear that the immigration consequences of receiving these benefits simply cannot be known.

These individual immigrants and their families will be directly harmed by the proposed rule, but ultimately the negative effects will be felt by the State as a whole as our health care, housing, and social services systems become overburdened as a result of the rule's second-order effects.

A less obvious but equally concerning aspect of the proposed rule is the degree of complexity, discretion, and unpredictability it introduces to any individual public charge determination. The rule does not, for instance, require that a determination that an immigrant is likely to become a public charge in the future rest on an immigrant's actual receipt of any of the public benefits that are newly countable. This conclusion may instead be based simply on a DHS officer's prediction that an individual may use these benefits in small amounts in the future, or more broadly, on a prediction that an individual's age, health status, family size, employment history, or English language skills make it likely that the individual may become a public charge in the future. This approach creates unacceptable uncertainty for immigrants who are legally present and following our immigration rules and risks arbitrary decision making by DHS. The approach also fails to recognize what we know here in the Commonwealth: that many of the most productive members of our community arrived in this country with little but their determination to succeed.

Finally, it is troubling that DHS has proposed a rule that under its own analysis and in its own words may well produce the following effects among immigrants who are lawfully present in our country: "worse health outcomes," "increased use of emergency rooms and emergent care," "increased prevalence of communicable diseases," "increased rates of poverty and housing instability," and "reduced productivity and educational attainment."[1]

A fuller account of the negative consequences of the proposed rule is provided by the six Massachusetts agencies that have submitted detailed comments to your office today. Those consequences include

- fewer children, adults, and families receiving health care coverage
- long-term harm to the public health of all Massachusetts residents as a result of declines in preventive care, such as vaccinations and treatment of infectious disease
- increased reliance on hospital emergency rooms for medical treatment by immigrant residents
- increased cost of uncompensated care for hospitals, community health centers, and other health care providers
- increased homelessness and family separation among immigrant families, including those with citizen family members
- increased food insecurity for immigrant families, including those with citizen family members
- increased health insurance premiums for all Massachusetts consumers

[1] See 83 Fed. Reg. 51,270 (October 10, 2018).

- unfunded mandates for Massachusetts, which will be required to provide safety net services as an alternative to the programs targeted by the new rule entirely at State expense rather than through cost-sharing with the Federal government
- a real risk that our immigrant population may begin to view all of government with distrust as a consequence of what will inevitably be received as punitive and highly discretionary eligibility determinations made under the new rule.

The DHS public charge rule as proposed would undermine the health and well being of the Massachusetts immigrant community, burden State resources, and negatively affect all residents of the Commonwealth of Massachusetts. I therefore urge DHS to rescind the proposed rule in its entirety.

Sincerely,

Marylou Sudders

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December 10, 2018

Via online docket submission
Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

Re: Inadmissibility on Public Charge Grounds
Formal Comment to Proposed Rule 83 FR 51114
DHS Docket No.: USCIS-2010-0012

Dear Ms. Deshommes:

The Massachusetts Department of Public Health (MA DPH) submits this comment to the Proposed Rule Inadmissibility on Public Charge Grounds, 83 FR 51114, DHS Docket No.: USCIS-2010-0012 (Proposed Rule). The Commonwealth of Massachusetts, including MA DPH, opposes the Proposed Rule and strongly advises that the Department of Homeland Security (DHS) withdraw the Proposed Rule. Massachusetts values the immigrant community's role in making our state a vibrant and competitive commonwealth and believes the proposed changes to the public charge rule would harm these interests by discouraging lawful Massachusetts residents from accessing basic supports such as medical care and other programs intended to help lawful immigrants to build economic self-sufficiency. At a minimum, and in the event that DHS declines to withdraw the proposed rule in its entirety, MA DPH encourages the DHS to revise the Proposed Rule in order to exclude health benefits from being treated as a "public benefit" in any public charge determination.

The Massachusetts Department of Public Health promotes the health and well-being of all Massachusetts residents by ensuring access to high-quality public health and healthcare services, and by focusing on prevention, wellness and health equity in all people. MA DPH is

particularly concerned with the aspects of the Proposed Rule that would negatively affect health access and outcomes. Accordingly, we take this opportunity to comment to highlight the negative impact of the rule on some of the programs and services supported by MA DPH.

Nutrition

MA DPH Bureau of Family and Nutrition provides programs and services ensuring the health of the Commonwealth's mothers, infants, children and youth, including children and youth with special needs and their families. MA DPH notes that the public discussion and publication of the Proposed Rule may have already negatively impacted access to programs that support positive public health outcomes. For example, in February 2018 the news organization Reuters, released a proposed draft of the Proposed Rule Inadmissibility on Public Charge Grounds which included the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) as a public benefit. Since that time there has been a 2,000 person reduction from 2017 levels in participants in WIC across Massachusetts, even though WIC, ultimately, was not included in the programs considered by the Proposed Rule. Massachusetts WIC serves nearly half of all babies born in the Commonwealth, providing services to more than 200,000 eligible pregnant women, infants and children annually. In addition to alleviating food insecurity, WIC participation is associated with improved pregnancy outcomes, better birth weights, and a decrease in prematurity. Ensuring that families can access WIC services allows MA DPH to address the nutrition and health needs of low income families. An inability to access WIC will increase food insecurity for low income families. Food insecurity in households with children is associated with inadequate intake of several important nutrients, deficits in cognitive development, behavioral problems, and poor health.

MA DPH supports the proposed rule's exclusion of WIC from the types of public benefits considered in public charge inadmissibility determinations. MA DPH urges DHS likewise exclude receipt of benefits from the Supplemental Nutrition Assistance Program (SNAP) from any public charge determination. SNAP participation, like WIC, serves to reduce food insecurity and the negative health outcomes associated with limited or uncertain access to nutritious food. Nearly half of WIC households report that they rely on SNAP benefits in addition to WIC benefits to feed their families. Additionally, a decrease in SNAP participation as a result of treating receipt of SNAP benefits as a negative factor under the Proposed Rule would likely put a strain on WIC resources as more families will turn to WIC for food assistance.

Infectious Disease

MA DPH's Bureau of Infectious Disease and Laboratory Sciences tracks, tests for, and combats infectious disease. The Bureau also educates people in Massachusetts about preventing the spread of disease. MA DPH urges the DHS to exclude reliance on Medicare and Medicaid related benefits from the public benefits considered in public charge inadmissibility determinations. Massachusetts Medicare and Medicaid recipients rely on these programs to obtain diagnosis and treatment for tuberculosis and other infectious diseases, such as HIV. MA DPH is concerned that treatment of Medicare and Medicaid related benefits as a negative

factor in the public charge determination under the Proposed Rule will result in delays in diagnosing and treating these diseases due to the disincentive the Rule will create for lawfully present immigrants to take advantage of these public health supports. Additionally, MA DPH anticipates that promulgation of the Proposed Rule as written will result in decreased utilization of children's healthcare, including vaccinations, which will increase the risk for vaccine preventable diseases. These effects will pose an immediate risk to the help of individual immigrants and is also likely to result in increased transmission of tuberculosis or other infectious disease in the Commonwealth of Massachusetts and in other states, increasing the likelihood of an outbreak.

Increased transmission of these communicable diseases is, at a minimum, likely to require that public health agencies like MA DPH undertake larger and more complicated contact investigations. A contact investigation is a systematic process to identify who an infected person has come in contact with in order to stem the continued spread of an infectious disease, and is a vital tool in protecting public health. The MA DPH Bureau of Infectious Disease and Laboratory Sciences conducts epidemiologic contact investigations in instances of infectious disease outbreaks. In doing so, the Bureau often cooperates with our federal partners at the Centers for Disease Control and Prevention. If the Proposed Rule were to be enacted as written, MA DPH anticipates a chilling effect reducing the number of immigrants willing to cooperate with governmental entities conducting infectious disease investigations. As a result, such contact investigations will be more difficult, if not impossible, to conduct as individuals will choose not disclose contacts out of fear. A reduction in MA DPH's ability to conduct infectious disease contract tracing will resulting in inability to stop transmission of infectious diseases, increasing the risk of outbreaks.

Cancer Screenings

The MA DPH Bureau of Community Health and Prevention promotes the well-being of people in Massachusetts by serving individuals, communities, and organizations in the areas of chronic disease prevention and wellness and access to quality health services. The Women's Health Network, a MA DPH service which provides cancer screening and diagnostic services, case management, and patient navigation to men and women in Massachusetts has learned from its contracted providers that, increasingly, immigrants will not access these services because they are concerned their personal information may be collected by a government agency while there is a risk of such information being used to determine whether they are a public charge. Early detection is closely tied to the successful treatment of many cancers. Any delays in screening caused by the Proposed Rule will increase the likelihood of negative health outcomes. Accordingly, MA DPH reiterates its request that the Proposed Rule be withdrawn in its entirety.

Sexual and Domestic Violence

MA DPH's Bureau of Community Health also administers a Division of Sexual and Domestic Violence Prevention that works to eliminate sexual and domestic violence and

support the health of those impacted by such violence. MA DPH has received notice of specific instances of negative effects on utilization of these programs as a result of generalized fears caused by the publication of the Proposed Rule. Sexual and Domestic Violence Survivor Service Providers have notified MA DPH of a number of survivors who have withdrawn from services for themselves and their children due to concerns about potential consequences with regards to their immigration status, including victims of human trafficking, rape, and domestic violence who are eligible for status under the Violence Against Women Act. This leaves people vulnerable to additional violence and impedes efforts to recover from the physical and mental health impacts of such violence. MA DPH consequently urges the Department of Homeland Security to withdraw the rule in its entirety so as to lessen the risk of negative health outcomes to these populations.

MA DPH is concerned that the Proposed Rule has already had negative impacts on public health, and will continue to do so should it become effective. The Massachusetts Department of Public Health opposes its promulgation and, in the strongest possible terms and urges the Department of Homeland Security to withdraw the Proposed Rule in its entirely. The Commonwealth of Massachusetts has made great strides toward improving and supporting the health of all its residents. The Proposed Rule would undermine this work. As such, the Massachusetts Department of Public Health urges the Department of Homeland Security to withdraw this Proposed Rule and instead support the work already being done on the federal, state, and local levels to protect public health.

Please let me know if you have any questions or need additional information about this important rule that will impact residents of the Commonwealth.

Sincerely,

Monica Bharel, MD, MPH
Commissioner
Massachusetts Department of Public Health

Cc: Secretary Marylou Sudders, Executive Office of Health and Human Services

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December 10, 2018

Samantha Deshommes
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U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529–2140.

Re: Comments on Inadmissibility on Public Charge Grounds Rule Docket No. USCIS-2010-0012

Dear Ms. Deshommes:

The Commonwealth of Massachusetts and the Massachusetts Medicaid (MassHealth) and CHIP program (MassHealth) are opposed to the Department of Homeland Security's proposed public charge rule and strongly advise that the proposed rule be withdrawn. The Baker-Polito Administration values the immigrant community's role in making Massachusetts a vibrant and competitive commonwealth. The Administration believes DHS's proposed rule would cause individuals and families who are lawfully present in the Commonwealth to cease accessing programs intended to provide support for basic needs like food assistance and medical care. This would create unacceptable costs both for the individuals directly affected and for the Commonwealth of Massachusetts as a whole.

MassHealth provides comprehensive, affordable health coverage to approximately 1.8 million residents of the Commonwealth, including approximately 40% of all Massachusetts children and 60% of all residents with disabilities. MassHealth's mission is to improve the health outcomes of our diverse members, their families and communities by providing access to integrated health care services that sustainably promote health, well-being, independence and quality of life. As a national leader in innovations to expand and improve coverage, MassHealth was one of the first Medicaid programs approved to expand Substance Use Disorder (SUD) services, and one of a handful to

ambitiously implement new Accountable Care Organizations to promote coordinated, value-based care. Approximately 264,000 MassHealth members have a noncitizen immigration status. This includes 52,000 children, 6,000 of whom are enrolled in the Children's Health Insurance Program (CHIP).

MassHealth strongly opposes the proposed public charge rule both in principle and for its easily anticipated negative impact on public health, the health care system, the MassHealth program, and the economy of Massachusetts, as detailed below.

The Rule Would Reduce Coverage and Harm Public Health

Massachusetts has the highest health insurance rate and is ranked the healthiest state in the country.[1] The proposed rule runs contrary to Massachusetts' approach to expanding coverage and would undermine the work that has led to these achievements.

Historical and contemporary evidence lead us to expect a substantial "chilling effect" that will extend beyond residents who are subject to the rule and lead to potentially significant reductions in the number of noncitizens applying for or remaining enrolled in MassHealth. Many of them will go uninsured, increasing their risk of illness and mortality.[2]

The best available estimate suggests that 500,000 or more immigrants across the Commonwealth could be affected by the proposed new rule.[3,4] The proposed rule's expansiveness, complexity and discretionary nature, coupled with more than a year of public debate of potentially even broader public charge definitions, will lead to confusion over program eligibility, concern about the potential of deportation, and fear that citizen children's use of benefits could be negatively weighted. Notably, MassHealth has an integrated Medicaid and CHIP program, with approximately 6,000 noncitizen children currently enrolled in CHIP. Many families are unaware that their children are enrolled in CHIP as opposed to Medicaid and that participation in CHIP will not be weighed as a negative factor in the public charge determination under the new rule. As a result, eligible families will likely lead eligible CHIP recipients to decline coverage notwithstanding the proposed exclusion. This will result in diminished health outcomes for these eligible families and increased, long-term costs to public health in Massachusetts.

In fact, federal regulation requires that Medicaid applications be unified with state health exchanges and CHIP applications, which Massachusetts has implemented through our integrated HIX eligibility system.[5] Consequently, under the proposed rule, lawfully present immigrants in Massachusetts would actually have no way to apply for health exchange and CHIP benefits without being penalized for applying to Medicaid. This would likely lead many immigrants who are eligible or whose citizen children are eligible for coverage through the Massachusetts Health Connector or CHIP to avoid

[1] United Health Foundation. (2017). America's Health Rankings: 2017 Annual Report. Retrieved from https://assets.americashealthrankings.org/app/uploads/2017annualreport.pdf

[2] Sommers, B.D., Baicker, K., Epstein, A.M. (2012). Mortality and Access to Care Among Adults After State Medicaid Expansions. *New England Journal of Medicine*, 367:1025-1034. doi:10.1056/NEJMsa1202099

[3] Manatt. (2018) Public Charge Proposed Rule: Potentially Chilled Population Data Dashboard. Retrieved from https://www.manatt.com/Insights/Articles/2018/Public-Charge-Rule-Potentially-Chilled-Population#DataDashboard

[4] Wagman, N. (2018). A Chilly Reception: Proposed Immigration Rule Creates Chilling Effect for New Immigrants and Current Citizen. Retrieved from the Massachusetts Budget and Policy Center website: http://www.massbudget.org/report_window.php?loc=A-Chilly-Reception-Proposed-Immigration-Rule.html

[5] 45 CFR 155.405

applying altogether for fear of jeopardizing their immigration prospects. In addition, individuals eligible for Medicaid are not eligible for subsidized exchange coverage so such coverage would not be an option for them.

Most immigrants who choose to avoid applying for coverage or to disenroll from MassHealth will be left uninsured or underinsured. Many noncitizen members are eligible for MassHealth because they are children, are pregnant, or have a disability, precisely because those groups are a coverage priority from a medical and developmental perspective. The anticipated coverage declines will therefore likely lead to disproportionate morbidity in this already vulnerable population, including increased rates of infant mortality. Furthermore, many of the same noncitizen members who disenroll from MassHealth will for like reasons simultaneously disenroll from other health-related benefits such as SNAP and Section 8, potentially worsening their health status further. Indeed, DHS acknowledges that the rule will result in higher rates of uninsurance, reduced use of primary care, delayed treatment, and "worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children."[6]

The rise in uninsurance under the rule will cause Massachusetts to face greater costs and hurdles in managing public health challenges and will particularly hinder our efforts to address the opioid epidemic. The Commonwealth has committed to investing nearly $420 million over five years through our Section 1115 Demonstration to expand access to SUD treatment. This rule will roll back SUD access for the immigrant community, undermining the joint federal and state investment and the Commonwealth's work on this priority issue. The rule will also induce more immigrants to forgo immunizations or viral suppression treatment, driving up rates of infectious disease. We can therefore reasonably expect that a near certain outcome of the proposed rule will be an increase in morbidity and mortality among MassHealth members and across the Commonwealth, reaching far beyond the population subject to the proposed rule.

<u>The Rule Burdens the MA Healthcare System</u>

Under the proposed rule, MassHealth anticipates a significant increase in uncompensated care across the Commonwealth. Ample evidence leads us to expect that when immigrants disenroll from health coverage, uncompensated care rates will rise and will shift from less expensive preventive and primary care to more costly acute and emergency care. Simultaneously, immigrant disenrollment from other health-related social benefits may further drive up uncompensated care costs. Indeed, low-income adults participating in SNAP incur about $1,400, or nearly 25%, less in medical care costs in a year than low-income non-participants.[7]

The financial burden of providing this uncompensated care will be born disproportionately by safety net providers that provide crucial access for MassHealth members, including hospitals and community health centers, threatening their fiscal sustainability. As uncompensated care expands, the demand on state programs that compensate providers for such care will increase. While it is difficult to estimate the cost of this uncompensated care, we can predict that Massachusetts

[6] Page 51270 of the proposed rule.

[7] Berkowitz, S.A., Seligman, H.K., Rigdon, J. (2017). Supplemental Nutrition Assistance Program (SNAP) Participation and Health Care Expenditures Among Low-Income Adults. *JAMA Internal Medicine*, 177(11):1642-1649. doi:10.1001/jamainternmed.2017.4841

hospitals stand to lose approximately $457 million in Medicaid and CHIP funding as a result of the proposed rule's chilling effect.[8]

In addition to expanding uncompensated care, the rule will likely reduce the Commonwealth's health care workforce capacity. One in five health care workers in Massachusetts is an immigrant.[9] Immigrants' vital role in the health care sector is particularly evident in certain regions, such as the Boston area, where immigrants make up 29% of hospital staff and 53% of home health aides.[10] DHS acknowledges that the proposed rule may result in a loss of immigrant productivity and educational attainment, and increased poverty, as immigrants disenrolling from health-related programs may become too sick to work and others who choose not to disenroll may have their legal work statuses denied when they seek status adjustment.[11] These impacts would exacerbate the nursing and home health worker shortage already facing the Commonwealth. Moreover, immigrant-led households in Massachusetts paid $6.5 billion in federal taxes and $3 billion in state and local taxes in 2014.[12] The proposed rule would therefore weaken the Massachusetts health care system on two fronts- by increasing uncompensated care and by reducing state resources to provide that care as immigrant workers fall out of employment and cease to contribute as tax payers.

The rule would also undermine the goals of MassHealth's recent restructuring. The federal government has partnered with MassHealth through a Section 1115 Demonstration to pursue an innovative shift toward Accountable Care Organizations (ACOs), which are financially accountable for managing population health and total cost of care. In order to succeed under this new structure, providers participating in ACOs must invest in initiatives to promote care coordination, integrate medical and behavioral health care, and connect members with social services. The proposed rule would weaken the impact and effectiveness of this restructuring by raising uninsurance rates, forcing ACO providers to funnel resources toward providing uncompensated care rather than toward the initiatives needed to ensure success under the ACO model.

In summary, the rule would decrease health coverage and shift the burden of payment from a federal/state partnership onto providers and states, while reducing the state health care workforce and tax base. For the reasons explained above, these effects on the health care system will have a pronounced detrimental impact on MassHealth providers and members and on residents across the Commonwealth.

<u>The Rule Undermines Access to School-Based Medicaid While Claiming to Preserve Such Access</u>

The proposed rule states that School-Based Medicaid, including services provided to children with Individualized Education Plans (IEPs) will not be considered as public benefits for purposes of the public charge rule, even though Medicaid benefits (other than emergency Medicaid) are public benefits for purposes of the public charge rule. This distinction misunderstands the applicable

[8] Mann, C., Grady, A., Orris, A. (2018) Public Charge Proposed Rule: Hospital Medicaid Payments at Risk. Retrieved from https://www.manatt.com/insights/newsletters/health-update/public-charge-proposed-rule-hospital-medicaid

[9] Altorjai, S. and Batalova, J. (2017). Immigrant Health-Care Workers in the United States. Retrieved from the Migration Policy Institute website: https://www.migrationpolicy.org/article/immigrant-health-care-workers-united-states

[10] Osterman, P., Kimball, W., Riordan, C. (2017) Boston's Immigrants: An Essential Component of a Strong Economy. Retrieved from the JVS Center for Economic Opportunity website: https://www.jvs-boston.org/wp-content/uploads/2017/11/Osterman-Report-Final.pdf

[11] Page 51270 of the proposed rule.

[12] New American Economy. (2016) The Contributions of New Americans in Massachusetts. Retreived from: http://research.newamericaneconomy.org/wp-content/uploads/2017/02/nae-ma-report.pdf

Medicaid scheme. School-Based Medicaid is not a standalone category of Medicaid. Only children who are enrolled in comprehensive Medicaid are eligible for School-Based Medicaid. As a result, while the rule purports to preserve access to School-Based Medicaid – any child that received Medicaid would have that Medicaid counted as a public benefit. This is likely to confuse local educational agencies (LEAs), resulting in efforts to enroll children in Medicaid for the purpose of claiming School-Based Medicaid and creating risk to the immigration status of children and their families. Moreover, while the proposed rule purports to preserve crucial Medicaid funding LEAs now receive to support special education services, in fact, LEAs will experience reduced funding for the special education services they provide to immigrant children.

The Rule is an Unfunded Mandate

Implementing the rule would require MassHealth and other Medicaid agencies to undertake significant and costly systems and operational modifications. The scope of necessary modifications will depend on the data reporting requirements in the rule, which are unclear as currently written.

Even in the absence of more detailed reporting requirements, MassHealth can reasonably expect that considerable systems and operations modifications will be needed to achieve compliance and provide appropriate notice to applicants and members. Form I-944, Declaration of Self-Sufficiency, which DHS proposes to use for public charge determinations, would require immigrants to report whether they have ever applied for or received one of a certain list public benefits and to provide detailed information about the amount and timeline of that benefit.[13]To assist our members, MassHealth will need to develop new procedures to provide immigrant members with this information. This will require building out new Customer Service and operational workflows, as well as constructing new data report protocols to pull benefit information for the particular immigration statuses and for the particular programs subject to the rule. The accurate parsing of this member data will be crucial to avoid noncompliance with the rule on the one hand and unduly penalizing members on the other, and may require modifications to MassHealth's eligibility and information management systems. For example, the categories of immigrants included and excluded from the rule do not correlate with MassHealth's immigration status codes. New codes may need to be built in to properly identify members who would potentially be subject to the rule. Such changes would need to be replicated across MassHealth's various eligibility and claims systems.

In addition to modifications to achieve reporting compliance, MassHealth would need to undertake resource-intensive outreach to members and providers to alert them of the rule, including eligibility system modifications to ensure applicants are aware of the potential immigration consequences at the time of application. If the rule moves forward, MassHealth anticipates increased call volume and demand on its Customer Service Centers as members attempt to understand whether and in what way they will be impacted, request disenrollment, and seek benefit information for immigration applications. This surge in volume will likely lead to increased costs for interpreter services, and may require increased customer service staffing levels. MassHealth expects to incur costs to develop new trainings and policies for customer service and eligibility staff, as well as for Certified Application Counselors and Navigators, to ensure they are adequately prepared to address member questions about the rule.

[13] Retrieved October 10, 2017 from: https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds

The Rule Allows Excessive Discretion in the Public Charge Determination

MassHealth also believes that the public charge determination process proposed in the rule is overly broad and speculative. The rule permits the denial of visas and status adjustments based not only on an applicant's use of benefits, but on the prospective determination that an immigrant may be "likely at any time in the future to receive one or more" public benefits. Therefore, though the rule enumerates specific factors to negatively weight, the ultimate decision is based on a DHS official's subjective assessment of the immigrant. MassHealth questions the notion that DHS can accurately determine whether an applicant is likely to become primarily dependent on the government for subsistence. There is no objective basis upon which to determine whether any particular individual will fall ill or become impoverished. Moreover, prospectively concluding that an individual is destined to become a public charge undermines the fundamental American ideal that any person has the potential to rise above their circumstances.

Even for cases in which an immigrant is currently "primarily dependent" on public benefits, MassHealth objects to penalizing immigrants for receiving benefits to which they are entitled. We believe public benefits are a crucial safety net for families and a step up for immigrants on their way to economic stability. These are services that make it possible for parents to feed their children dinner and breakfast, that keep children immunized and cancer patients in treatment, and that provide families a safe place to sleep instead of their car or a bench. Participating in such programs does not make one unfit to be an American. Quite to the contrary: on the criteria advanced in the proposed rule, at least 40% of American citizens would not pass the public charge test and would therefore be inadmissible to their home country and otherwise ineligible for permanent residence or eventual citizenship.[14]

State Recommendations

For the reasons detailed above, MassHealth urges DHS to withdraw the proposed rule.

Should DHS decline to withdraw the proposed rule, MassHealth urges DHS to exclude the use of health care benefits, as access to good health care is fundamental to any person's ability to work, go to school and contribute to society. In particular, MassHealth urges that any final form of the rule exclude CHIP and all other benefits that children may receive. Ample public health evidence suggests that adequate housing, nutrition, and health care makes a child more likely to be self-sufficient as an adult, not less.[15,16] Expanding childhood hunger, housing insecurity, uninsurance, and poverty is not only adverse to the Commonwealth as a whole, but will lead to greater costs over the long term, as much of an individual's health and educational trajectory are established during childhood.

We also recommend that any form of a public charge rule ultimately adopted expand the set of immigration statuses that are not subject to the public charge determination, in order to avoid

[14] Kaiser Family Foundation. (2016). Distribution of Total Population by Federal Poverty Level. Retrieved from: https://www.kff.org/other/state-indicator/distribution-by-fpl/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D

[15] Gundersen, C. and Ziliak, J.P. (2015). Food Insecurity and Health Outcomes. *Health Affairs.* (34)11, 830-1839. https://doi.org/10.1377/hlthaff.2015.0645

[16] Moore, T.G., McDonald, M., Carlon, L. O'Rourke, K. (2015). Early childhood development and the social determinants of health inequities, *Health Promotion International* (30) sup2, 102–115. https://doi.org/10.1093/heapro/dav031

arbitrary distinctions. For example, the rule excludes benefit receipt of active duty service members, so should likewise exclude benefit receipt of veterans. Additionally, we propose that the rule not negatively weight application for public benefits that did not result in an applicant receiving public benefits, for reasons discussed above related to regulatory requirements for unified Medicaid and health exchange applications. MassHealth also recommends clarification in the rule's language regarding data reporting requirements. Finally, we recommend that any rule implemented have an effective date no earlier than January 1, 2023. This would allow time to complete any operational and systems modifications necessary for compliance.

Conclusion

MassHealth can confidently predict that the proposed rule would have sustained and long-term negative consequences for MassHealth member health, the provider system, and the Massachusetts economy as a whole based on historical experience with similar policy changes and evidence-based projections. The rule would undermine MassHealth's nationally leading delivery reform and substance use disorder treatment efforts, and hamper our ability to ensure affordable, high quality care for our members. In effect, the rule would threaten the Commonwealth's right to shape its own health care system and maintain its strong economy.

For the reasons detailed above, MassHealth respectfully urges DHS to withdraw the proposed rule change. MassHealth and the Commonwealth of Massachusetts appreciate the opportunity to comment on this proposed rule and look forward to continuing to work with the Administration to strengthen and improve the Medicaid program. Thank you for consideration of these comments.

Sincerely,

Daniel Tsai
Assistant Secretary for MassHealth

Cc: Secretary Marylou Sudders

The Commonwealth of Massachusetts
Commonwealth Health Insurance Connector Authority
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Board Chair

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December 10, 2018

Ms. Samantha Deshommes, Chief
Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
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ATTN: DHS Docket Number USCIS-2010-0012

Re: Notice of Proposed Rulemaking, "Inadmissibility on Public Charge Grounds" (Published in Federal Register Volume 83, Number 196 on October 10, 2018)

Dear Chief Deshommes:

The Massachusetts Health Connector ("Health Connector"), a state-based health insurance Marketplace authorized under the Patient Protection and Affordable Care Act of 2010 ("ACA"), appreciates the opportunity provided by the Department of Homeland Security ("DHS") to comment on the proposed rule, "Inadmissibility on Public Charge Grounds."[1]

The Commonwealth of Massachusetts, including the Health Connector, is opposed to the proposed rule and strongly advises that the proposed rule be withdrawn. The Commonwealth of Massachusetts values the immigrant community's role in making our state a vibrant and competitive commonwealth and believes the proposed changes to the public charge rule would harm these interests by discouraging lawful Massachusetts residents from accessing basic supports such as medical care and other programs intended to help lawful immigrants to build economic self-sufficiency.

[1] 83 FR 51114 at www.gpo.gov/fdsys/pkg/FR-2018-10-10/pdf/2018-21106.pdf.

The Health Connector was created as part of Massachusetts's state-level bipartisan health reform law and is designed to connect Massachusetts residents with high quality, affordable health coverage and to promote universal health coverage in the Commonwealth. The Health Connector is a health insurance exchange and administers the sale of health insurance, in some cases subsidized with federal Advance Premium Tax Credits (APTC), to income-eligible individuals, including both citizens and lawfully present residents. Through over a decade of effort and close collaboration with local insurance carriers, health care providers, business leaders, and consumer groups, we have been successful in this mission: the Commonwealth has a nation-leading health insurance rate of 97%,[2] we are ranked the healthiest state in the nation,[3] and we have the lowest-cost average Marketplace premiums in the country.[4] The proposed rule would undermine our state's ability to further this mission and threaten the gains our state has made to secure near-universal health coverage.

The Health Connector opposes the proposed extension of the public charge doctrine to public health coverage programs because of the likelihood that the proposed rule would undermine the state's traditional role in managing the health and welfare of its citizens and lawfully present residents. While we note that the proposed extension of the public charge rule does not directly affect Advance Premium Tax Credits, which are the federally subsidized health benefits available through the Health Connector, for the reasons we outline below, we anticipate the rule would indirectly threaten the health insurance security of the households of up to 60,000 lawfully present Health Connector insureds, which in turn could destabilize our commercial insurance market.[5]

The proposed changes would represent a dramatic departure from the public charge approach DHS has taken for two decades. That approach sensibly recognizes the valuable role of health insurance benefits in allowing lawfully present immigrants to stay healthy so that they may fully contribute to their families, communities, and states. We urge DHS to reverse its current course, which dispenses with this proven policy and instead puts health coverage through the Health Connector at risk for thousands of Massachusetts residents and threatens to destabilize our insurance market and our state's historic and proven approach to health coverage.

We respectfully offer the following specific comments relating to the proposed rule.

A. DHS should withdraw the proposed rule, or at minimum, significantly revise the proposed rule to clarify that Medicaid, Medicare Part D subsidies, and other health coverage programs are not affected by the public charge doctrine.

The Health Connector has significant concerns about the rule's proposal to extend public charge determinations to Medicaid and Medicare Part D subsidies for the following reasons.

1. <u>Although the proposed rule does not include use of Advance Premium Tax Credits (APTCs) through ACA Marketplaces in a determination of public charge, inclusion of other types of health benefits will result in fewer eligible individuals enrolling in Marketplace coverage.</u>

The Health Connector is concerned that although its own applicants and enrollees are not subject to a public charge determination under the proposed rule, many of these individuals will be deterred

[2] U.S. Census Bureau, at www2.census.gov/programs-surveys/demo/tables/p60/264/table6.pdf.
[3] *See* www.mass.gov/news/massachusetts-named-healthiest-state-in-the-nation.
[4] Analysis of CMS Public Use Files, at www.cms.gov/CCIIO/Resources/Data-Resources/marketplace-puf.html.
[5] Health Connector analysis of member data, on file.

from applying for or enrolling in Marketplace coverage due to the close relationship between Medicaid and Marketplaces at a state level.

Federal law requires that ACA-compliant Marketplaces such as the Health Connector offer a "single streamlined application" to determine eligibility for Marketplace plans and affordability assistance (such as APTCs) and Medicaid.[6] As a result, Massachusetts, like certain other states, has developed an application and enrollment system that is jointly administered by the Health Connector and the state's Medicaid agency. Federal regulations do not allow an individual to apply only for APTCs or only for Medicaid; an application for one must be an application for both. In keeping with the governing federal laws, applicants for health coverage in Massachusetts experience a virtually seamless process; they apply for Medicaid, CHIP, and Marketplace financial assistance using a uniform application portal, and are subsequently determined eligible for the appropriate program.

Because of this required design, many lawfully present immigrants may not know that receipt of benefits from the Health Connector and Medicaid are treated differently under the proposed rule. In fact, the preamble of the proposed rule and early implementation forms[7] appear to suggest that Medicaid applicants—rather than just Medicaid recipients—could be swept up by public charge determinations. As a result, if the proposed rule is adopted, eligible lawfully present immigrants are likely to forgo applying for *all* health programs available from our unified application portal, even though participation in Health Connector and CHIP programs would carry no consequence under the proposed revision to the public charge rule.

We expect this chilling impact to be exacerbated by the fact that many of the Health Connector's enrollees are in households with individuals eligible for Medicaid or Medicare Part D subsidies, such as pregnant women, children, or elderly parents. These families may well withdraw from health programs wholesale in an effort to avoid negative impacts of the proposed rule on the immigration status of some household members. The Health Connector estimates that as many as 60,000 of its enrollees could be impacted by the rule as a result of these household-level decisions.

There is ample historical evidence to suggest that this chilling impact will occur in significant numbers. In study after study, changes to immigration policies have an outsized impact on public program take-up because of fear and confusion in the immigrant community. Given this, the Health Connector expects the proposed rule would lead to a significant downturn in enrollment among otherwise-eligible immigrants, even though they may not be directly impacted by the proposed rule. This will have serious negative consequences for the well-being of these lawful Massachusetts residents and for our state as a whole.

2. <u>The proposed rule's treatment of health program enrollment among immigrant communities and resulting chilling effect will erode significant coverage gains made under state health care reform efforts.</u>

In 2006, Massachusetts enacted a landmark package of health care reforms, including state subsidy programs for low- and moderate-income individuals, as well as a state-level individual mandate to have health insurance. Massachusetts currently leads the nation in health insurance coverage among its residents at 97%, which is the result of decades of work, even pre-dating our 2006 reform

[6] 45 CFR 155.405.

[7] See DHS Form I-944, "USCIS Instructions for Declaration of Self-Sufficiency," Item No. 9, Application for or Receipt of Public Benefits.

law. The highly restrictive federal polices DHS has proposed significantly alter the incentives and disincentives for families as they contemplate enrolling in coverage. This will undermine the Commonwealth's hard-won progress over the past 12 years to ensure all lawful residents have access to affordable health care and prevent the Commonwealth from maintaining its steady and high insurance rate.

Under the proposed rule, the Commonwealth would need to re-evaluate fundamental elements of its successful health reform framework in a way that could lead to declines in the level of insurance for Commonwealth residents as a whole. For example, the Commonwealth has maintained a requirement for over a decade that all adults have access to health insurance if affordable. If the proposed rule were finalized, it would impede the Commonwealth's ability to maintain this requirement for those individuals who could be placed at risk of adverse immigration consequences as a result of accessing coverage.

Similarly, the chilling effect in enrollment resulting from the proposed rule could diminish the Health Connector's long-standing role as a competitive marketplace available to nearly all Massachusetts residents. Reducing enrollment in Health Connector coverage undermines its ability to empower all Commonwealth consumers to shop for insurance in a competitive, transparent fashion. The Health Connector is the conduit to health insurance for over 260,000 Massachusetts residents—roughly 80% of all individuals who buy non-group (or individual market) coverage in the state. On behalf of its members, the Health Connector is able to procure high-quality plans at competitive premiums in a way that individual enrollees are not situated to do. Federal policies that deter consumers from enrolling in Marketplace coverage weaken the collective impact of individual market purchasers, yielding a less competitive insurance market for all.

3. <u>Reductions in insurance coverage stemming from the proposed rule would significantly harm the public health of Massachusetts residents</u>.

Massachusetts has pursued universal health coverage for the last 30 years because each individual enrolled in coverage makes everyone healthier.[8] Individuals with health insurance are more likely to receive preventive care such as vaccinations. Coverage expansions such as those Massachusetts enacted in 2006 help to ensure that traditionally underserved populations have access to care.[9] In addition to allowing individuals to access care when they need it, the security of having health insurance improves self-reported physical and mental health status.[10] In the face of compelling evidence linking insurance with public health, it is troubling that DHS would even consider adopting a rule that, in its own analysis, DHS admits could lead to:

- *Worse health outcomes, including increased prevalence of obesity and malnutrition, especially for pregnant or breastfeeding women, infants, or children, and reduced prescription adherence;*
- *Increased use of emergency rooms and emergent care as a method of primary health care due to delayed treatment;*

[8] Sommers, B. D., Gawande, A.A., and Baicker, K. (2017). Health Insurance Coverage and Health—What the Recent Evidence Tells Us. N Engl J Med 2017; 377:586-593DOI: 10.1056/NEJMsb1706645.
[9] Centers for Disease Control and Prevention. (2010). Short-Term Effects of Health-Care Coverage Legislation – Massachusetts 2008. MMWR 2010; 59:9.
[10] Van Der Wees PJ, Zaslavsky AM, Ayanian JZ. Improvements in health status after Massachusetts health care reform. Milbank Q 2013; 91: 663-89.

- *Increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated;*
- *Increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient;*
- *Increased rates of poverty and housing instability; and*
- *Reduced productivity and educational attainment.*[11]

Given these stated outcomes, it is unclear how DHS has concluded that the proposed rule will increase self-sufficiency for immigrants lawfully present in the United States. Rather, it seems designed to undermine the ability of individuals to better their health and the health and economic vitality of their communities.

4. <u>The remaining insured individuals—citizens and immigrants alike—are likely to face increased premiums as the result of fewer individuals enrolling in coverage.</u>

The Health Connector anticipates that disenrollment related to the rule will have ripple effects that extend broadly throughout the commercial insurance market.

It is important that DHS recognize that lawfully present immigrants have been proven to be more likely to represent "favorable" insurance risk, because they are younger, healthier, or lower-than-average utilizers of health care services when compared to the general insured population. Several studies have concluded that immigrants are net contributors to both private coverage and Medicare, paying more in insurance premiums than they receive in benefits.[12] Similarly, the Health Connector's own data demonstrates that its immigrant enrollees, on average, have 25% lower medical claims than its citizen members, a variance attributable both to the lower age of immigrant enrollees as well as lower utilization of medical services.[13] As a result, declines in take-up or retention of immigrant coverage related to the proposed rules could have an impact on the overall risk pool—in turn leading to commercial market premium increases for citizens and immigrants alike.

The risk that the public charge rule could increase commercial market premiums is particularly widespread in Massachusetts, because of our unique "merged market" structure. In Massachusetts, individuals and small businesses share a risk pool, insurance products, and premiums. As a result, changes to the Health Connector's individual enrollment can extend to a broader pool that includes Massachusetts's small business community, potentially increasing premiums across the board.

5. <u>Financial insecurity and negative health impacts caused by a lack of health insurance will harm immigrants as well as the economy overall.</u>

Individuals without health insurance have more absences from work, and delaying preventive or chronic condition care often results in higher health care costs in the future.[14] Research by the Federal Reserve Bank found that, in addition to improving labor market participation, Massachusetts's health care reforms decreased personal debt and increased credit scores among

[11] At 51270 of the proposed rule.
[12] Zallman, L., Woolhandler, S., Touw, S., Himmelstein, D.U., and Finnegan K.E. (2018). Immigrants pay more in private insurance premiums than they receive in benefits. Health Affairs 2018 37:10, 1663-1668.
[13] Health Connector analysis of claims data.
[14] Davis, K. (2003). The Costs and Consequences of Being Uninsured. The Commonwealth Fund. Available at https://www.commonwealthfund.org/sites/default/files/documents/___media_files_publications_in_the_literature_2003_jun_the_costs_and_consequences_of_being_uninsured_davis_consequences_itl_663_pdf.pdf.

state residents.[15] Similarly, Oregon's lottery system for Medicaid eligibility demonstrated that Medicaid coverage significantly reduced out of pocket spending, medical debt, and skipped payments, and virtually eliminated catastrophic expenses, all while significantly reducing depression among recipients.[16] Stabilizing a household's finances makes members less likely to need any public programs, whether considered in a determination of public charge or not. It also enables the household to more fully participate in local economies, which is a benefit to everyone.

Just as individuals with new access to insurance found greater job mobility and increased opportunities to start their own businesses under Massachusetts health care reform, the economy also saw growth in employment in the health care sector, benefitting individuals who may have already had health insurance.[17]

A reduction in the rate of insurance coverage threatens the financial well-being not only of the newly uninsured, but also health insurance issuers and health care providers who would experience enrollment instability, adverse selection, and increased rates of uncompensated care under the proposed rule, respectively. In the City of Boston alone, for example, a study estimates that the proposed rule would result in $3.8 to $15 million in uncompensated care costs for Boston hospitals each year.[18] Moreover, many of the immigrants enrolled in health coverage through the Health Connector choose carriers and providers with a long-standing commitment to underserved populations. As a result, any disenrollment from coverage resulting from the proposed rule may have a disproportionate and destabilizing impact on certain health care businesses that are critical to our local economy and health care system.

B. If DHS proceeds with the proposed rule, the rule must not infringe upon states' rights to advance the economic stability of their residents, nor expend states' limited resources.

In the event that DHS proceeds to finalize a rule change of the sort proposed notwithstanding the negative consequences likely to follow, the Health Connector offers the following comments:

1. <u>DHS should not expand the proposed rule to include Marketplace or CHIP affordability assistance as a "public benefit" considered as part of a public charge determination.</u>

While the Health Connector has significant concerns with the proposed rule because of the impacts outlined above, we note DHS' decision to exclude certain health coverage affordability programs from the newly proposed public charge determination criteria. Specifically, we support DHS continuing to exclude federal APTCs, federal Cost-Sharing Reductions (CSRs), Children's Health Insurance Programs (CHIP), and any other federal, state, or municipal program not specifically enumerated in the rule from the determination of public charge.[19]

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[15] Mazumder, B. and Miller, S. (2015). The effects of the Massachusetts health reform on financial distress. Federal Reserve Bank of Chicago Working Paper, 2014 (01). Available at https://www.chicagofed.org/publications/working-papers/2014/wp-01.

[16] Baicker K, Taubman SL, Allen HL, et al. (2013). The Oregon experiment — effects of Medicaid on clinical outcomes. N Engl J Med 2013; 368:1713-22.

[17] Blue Cross Blue Shield of Massachusetts Foundation. (2016). 10 Years of Impact: A Literature Review of Chapter 58 of the Acts of 2006. Available at https://bluecrossmafoundation.org/publication/10-years-impact-literature-review-chapter-58-acts-2006.

[18] Boston Planning and Development Agency. (2018). Impact of Proposed Federal Immigration Rule Changes on Boston: Public Charge Test for Inadmissibility. Available at: www.bostonplans.org/getattachment/e856c564-bf0f-47d4-9a44-75b430903f82.

[19] See Sections V(B)(2)(f) and (g) of the preamble to the proposed rule, at 51173.

There are two reasons why DHS must maintain this stance in any final rule:

- First, federal programs such as APTCs, CSRs, and CHIP allow lawfully present immigrants an opportunity to gain greater economic opportunity and mobility. These programs are designed to phase down gradually as an individual's income grows, allowing individuals to maintain continuous coverage while moving from lower-wage/entry-level status to middle-income status. Excluding these programs from the rule meets DHS' stated interest in improving self-sufficiency.
- Second, state and municipal health programs allow localities to independently meet the needs of their residents, including critical public health needs. These local programs have no bearing on federal immigration policy and are protected by the Tenth Amendment's traditional reservation of health, safety, and welfare power to the states. Excluding these programs from the rule meets DHS' stated focus on federal programs.

2. <u>DHS should clarify that a uniform application for unaffected public programs which incidentally includes affected programs does not trigger a public charge review.</u>

In addition to continuing to exclude Exchange programs such as APTCs from public charge consideration, DHS should clarify the interaction between applications for Exchange programs and other potentially impacted benefits. As noted above, the Health Connector and other Marketplaces are required by law to feature a uniform application process for Medicaid and non-Medicaid health programs. This could cause confusion, because an individual attempting to apply for Exchange insurance and programs could inadvertently be seen as a "Medicaid applicant."

As a result, any final rule must clarify that the mere application for an affected benefit such as Medicaid will not trigger a public charge review—only the receipt of such benefits. It is our interpretation that this would be the case in practice even under the proposed rule, given the benefit duration/quantity standards outlined in the proposed rule, but we would appreciate clarification of this point.

3. <u>DHS should eliminate the significant burden the proposed rule imposes on states, which attempts to commandeer state resources to achieve federal immigration policy goals.</u>

More generally, the Health Connector is troubled by the implication in the proposed rule that state and municipal benefits-granting agencies should participate in furthering the goals of the rule by notifying immigrants of public charge consequences.[20]

Since 2014, the Health Connector has operated under a federal legal framework in which lawfully present immigrants were not only encouraged to apply for health programs to which they are entitled, but were also assured that doing so would not impact their public charge determination. For example, as of the date of publication of the proposed rule in the Federal Register, the federal Healthcare.gov website indicated, "*Applying for Medicaid or CHIP, or getting savings for health insurance costs in the Marketplace, doesn't make someone a public charge. This means it won't affect their chances of becoming a Lawful Permanent Resident or U.S. citizen*."[21] In reliance on this framework, the Health Connector has constructed eligibility and enrollment systems, policies and

[20] See Sections (V)(B)(2)(i) of the preamble to the proposed rule, at 51174.
[21] www.healthcare.gov/immigrants/lawfully-present-immigrants/, accessed on 10/11/2018.

procedures, relationships with immigrant communities and those who work with them, and communications pathways that facilitate application and enrollment of eligible individuals regardless of their specific lawfully present status.

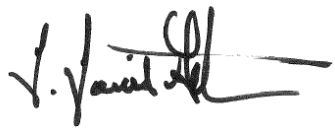
The proposed rule suggests that in furtherance of its policies, benefits-granting agencies should assume the burden and cost of modifying systems and notices to facilitate benefit termination for certain lawfully present immigrants subject to public charge. If the Health Connector were to assume this duty, it could cost the state millions of dollars to: (1) modify the joint Medicaid-Health Connector application to warn applicants of public charge consequences; (2) modify its reporting systems to better identify enrollees at risk of public charge; (3) modify its notices to warn select enrollees of public charge consequences, and then assume the cost of sending such notices; and (4) provide customer service support to individuals with questions about public charge consequences.

This constitutes an unacceptable burden on states. Under the Tenth Amendment's anti-commandeering doctrine, the federal government may not force participation of states in the administration of a federal program. If DHS proceeds with adopting the rule, it must include provisions describing how the federal government will assume the responsibility of proactively communicating with lawfully present immigrants about the potential consequences of public charge—up to and including sending advance notice to affected individuals upon receipt of benefits that could trigger a public charge determination if received for a sufficient duration or in a sufficient amount. DHS must not rely on states for administration of this harmful proposed rule.

In conclusion, immigrants are a vital part of the Massachusetts's economy, and vital participants in the state's long-standing approach to health policy. By adopting policies that could lead to a decline in participation in health care programs, DHS would fray the fabric of the insurance compact Massachusetts has taken great pains to foster over the last 30 years. All Massachusetts residents stand to lose as a result of this proposed rule.

We thank you for consideration of our comments.

Sincerely,



Louis Gutierrez
Executive Director

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December 10, 2018

Ms. Samantha Deshommes, Chief
Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, D.C. 20529-2140
ATTN: DHS Docket Number USCIS-2010-0012

RE: Notice of Proposed Rulemaking, "Inadmissibility on Public Charge Grounds"

Dear Chief Deshommes:

The Massachusetts Department of Transitional Assistance (DTA) submits this comment to the Proposed Rule, Inadmissibility on Public Charge Grounds, 83 FR 51114, DHS Docket No.: USCIS-2010-0012. DTA opposes the proposed changes to the public charge rule and strongly advises that it be withdrawn. The Commonwealth of Massachusetts values the immigrant community's role in making our state a vibrant and competitive commonwealth and **believes the proposed changes to the public charge rule would harm these interests by discouraging lawful Massachusetts residents from accessing basic supports such as medical care and other programs intended to help lawful immigrants to build economic self-sufficiency.** As a result, the revised policy would negatively affect the children and families DTA serves, as well as the overall Massachusetts economy. The proposed rule would also result in unfunded mandates for Massachusetts and other states.

DTA's mission is to assist and empower low-income individuals and families to meet their basic needs, improve their quality of life, and achieve long term economic self-sufficiency. DTA's programs are specifically designed to help people escape poverty, not to act as an income maintenance vehicle. Accordingly, recipients receive supplemental supports to enable skill development and employment in addition to cash assistance and food benefits. DTA strongly

supports the idea that families and individuals are much better prepared to become self-sufficient with the receipt of these additional supports.

DTA administers the Supplemental Nutrition Assistance Program (SNAP) and Transitional Aid to Families with Dependent Children (TAFDC), Massachusetts' Temporary Assistance to Needy Families (TANF) cash assistance program. It also administers the wholly state-funded cash assistance program for disabled and elderly individuals, Emergency Aid for the Elderly, Disabled, and Children (EAEDC). DTA serves over 776,000 Massachusetts individuals with its SNAP, TAFDC, and EAEDC programs. The SNAP program alone serves over 770,000 individuals. DTA serves approximately 68,000 noncitizens and the greatest number of these receive SNAP benefits. The new public charge rules treat all three programs as public benefits. This is a dramatic change from long-established policy, which treats only TAFDC and EAEDC benefits as public benefits for purposes of determining whether certain immigrants may become a public charge.

According to the record published in the Federal Register, the proposed changes to the public charge rules are intended to better evaluate whether certain immigrants are likely to become reliant on public benefits. The United States Department of Homeland Security (DHS) favors immigrants who "rely on their own capabilities" and the resources of family members, sponsors, and private organizations, rather than public resources. The rules propose a new way to determine who is, or is likely to become, a public charge by reviewing the "totality of the circumstances" of immigrant individuals and their families. In addition, the rules expand the list of benefits to be used in making a public charge determination. One of the major changes is the inclusion of SNAP.

DTA strongly believes that SNAP, a nutrition assistance program that helps millions of families and children stay healthy and fed, should not be added to the public charge indicator list. Instead, use of SNAP benefits should be disregarded just as use of Women, Infant and Children (WIC) benefits are not considered in the proposed rule. An earlier leaked draft of these proposed rules in fact treated WIC benefits as a public benefit that would be considered in the new public charge determination, but WIC was removed from this determination in the final proposed regulations. SNAP should similarly be excluded. Like the WIC program, SNAP is an important nutrition/health-related benefit. There is no substantive reason to distinguish between WIC and SNAP in this context, especially given SNAP's much wider scope and the millions of children, including citizen children, who are eligible for this important program.

DTA is concerned that the proposed rules fail to account for the increased economic and social costs that will result when families and individuals eligible for "safety net" programs such as SNAP do not seek or continue to receive such assistance.[1] These costs will accrue both to the

[1] While DHS is clear that any public benefit receipt prior to the promulgation of the final rule will not count as a negative factor, anecdotally, DTA staff have heard legal noncitizens are already seeking to close their public assistance cases, or failing to apply for them, due to fear, unfounded or not, of deportation or harming future citizenship prospects.

states and to the federal government, and they are not hard to anticipate. Perhaps most concerning is the negative impact on our most vulnerable clients – children, including citizen children of noncitizen parents. As a result of reduced benefit usage, more children living in the United States will likely go hungry and experience homelessness. Such deprivations directly correlate with increased learning delays, behavioral problems, and health issues for affected children. It is unclear whether DHS considered the resulting, long-term increased public costs of education (including special education), communicable diseases, emergency medical care, and law enforcement in its overall cost analysis. A full weighing of these costs militates strongly against the proposed rule's approach of discouraging lawfully present immigrants from taking advantage of the benefits that these safety net programs are intended to provide.

DTA is also concerned about the need for increased administrative resources and staff the proposed rules would place on DTA and other agencies faced with administering the one- to three-year look back period for benefit receipt. In order to implement its proposal successfully, DHS will need state agencies to provide it with very detailed information concerning benefit administration. States with large immigrant populations like Massachusetts will require multiple state agencies with limited resources to help verify public benefit receipt and benefit amounts for DHS purposes. Because many of the households DTA serves are comprised of both citizen and noncitizen members, this calculation will be highly complex and cumbersome. This need for new resources is an unfunded mandate on the Commonwealth and other states.

In addition to the need for more agency staff, implementation of the proposed rules will result in the need for significant training resources. For years, the federal government, through its Food and Nutrition Service (FNS), has required state SNAP agencies to adhere to a policy of strict separation between DHS and SNAP eligibility. FNS explicitly directed State agencies not to delve into the immigration status of so-called "nonapplicant" noncitizens and to instead focus solely on the provision of SNAP, an important nutrition benefit, to eligible household members. This proposed rule is in direct conflict with that longstanding principle, and the adjustment to this dramatic shift in policy will take DTA staff considerable time and retraining to fully implement.

DTA is already struggling with the conundrum raised by exactly how to instruct its over 700 case managers if the proposed rules are promulgated. Agencies like DTA are charged to help its clients—citizens and lawfully present immigrants—by providing needed assistance. This mission will be difficult to fulfill if a client accepting this assistance will be putting at risk his or her future citizenship prospects. Accordingly, case managers will have to be trained extensively upon the new rules and simultaneously proceed with caution – otherwise, their advice may inadvertently threaten a family's ability to stay together or to remain in the U.S. This responsibility presents a particularly daunting challenge in view of the fact that the proposed policy provides no clear lines on how public charge evaluations will be made: while reliance on public benefits such as SNAP is a negatively weighted consideration, the final determination in each individual case is left to the broad discretion of the individual DHS case officer. DTA fears

this will inevitably lead to its staff treating citizen and noncitizen households inequitably, and perhaps, unknowingly endangering its noncitizen clients.

As the Massachusetts SNAP agency, DTA is also concerned about the impact of this proposed rule on Massachusetts' overall economy. While the discussion of the proposed rule in the Federal Register mentions potential "downstream and upstream impacts," it appears that DHS has made no real attempt to calculate or measure these costs. The omission is unwise in the remaking of a policy with such broad reach. DTA notes as well that the proposed rule's adoption of a financial threshold for use of a "monetizable" public assistance benefit receipt that could lead to negative consideration in the public charge determination appears arbitrary. The rule concludes that any use of a monetizable benefit that constitutes 15% or more of the Federal Poverty Guidelines (FPG) within a year should trigger negative consideration. While DTA does not necessarily contest the use of the FPG as a standard, the justification for using a 15% threshold is unsupported beyond a statement that it is "a reasonable approach." The approach is not reasonable. According to the example provided by DHS in its filing, an individual's receipt of more than $1821 in cash benefits (or $151.75 monthly) in a one-year period would be considered a negative factor when determining whether the individual is likely to become a public charge. This standard is both arbitrary and exceedingly low.

DTA urges DHS to withdraw this proposed rule because of the social and economic costs and the unfunded mandate on Massachusetts and other states. If DHS decides to promulgate a new public charge policy, DHS should wholly exclude SNAP benefits from the public charge equation. DHS should delay the effective date of any final rule until 2023 in order to give DTA time to make the changes necessary to implement the new rule.

In closing, I repeat that Massachusetts values the role our immigrant communities play in making the Commonwealth a vibrant and competitive society. DTA has grave concerns with the revised public charge rule proposed by DHS. DTA respectfully encourages DHS to reconsider its proposed policy in light of our country's long history as a place where immigrants are welcome and where basic government assistance helps newly arriving immigrants to become self-supporting and productive contributors to society. As designed, the new public charge rules fundamentally conflict with this essential part of the American story.

Sincerely,

Jeff McCue
Commissioner

cc: Marylou Sudders, Secretary, Executive Office of Health and Human Services

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December 10, 2018

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ATTN: DHS Docket Number USCIS-2010-0012

Re: Notice of Proposed Rulemaking, "Inadmissibility on Public Charge Grounds"
(DHS Docket No. USCIS-2010-0012)

Dear Chief Deshommes:

The Massachusetts Office for Refugees and Immigrants (ORI) submits this comment to the Department of Homeland Security (DHS) in response to DHS' proposed rule on Inadmissibility on Public Charge Grounds, DHS Docket No. USCIS-2010-0012. The Commonwealth of Massachusetts and ORI oppose the proposed rule and urge DHS to withdraw the rule in its entirety.

Massachusetts values the immigrant community's role in making our state a vibrant and competitive Commonwealth. ORI believes that the public charge rule proposed by DHS would harm these interests by discouraging lawfully-present immigrants from accessing basic supports such as medical care and other programs intended to help them build economic self-sufficiency. The revised policy would as a result cause harm to the children and families ORI serves, create unfunded mandates for Massachusetts and other states, and negatively affect the overall Massachusetts' economy.

ORI annually serves over 5,000 immigrants residing in Massachusetts through the Massachusetts Refugee Resettlement Program, employment services, and citizenship services. ORI's mission is to promote the full participation of refugees and immigrants as self-sufficient individuals and families in the economic, social, and civic life of the Commonwealth. ORI's programs are specifically designed to

help people who immigrate to our State to integrate into their new community. Accordingly, ORI provides recipients with supports to enable skills development and employment, in addition to case management and cash assistance. ORI strongly supports the idea that families and individuals are much better prepared to become self-sufficient with the receipt of these additional supports. Our office has extensive experience with permanent residents, immigrants, and the refugee resettlement program, providing our office with a deep understanding of the concerns of the immigrant population and the implications of the proposed changes.

According to the record published in the Federal Register, the proposed changes to the "public charge" rules are intended to permit DHS to evaluate whether certain immigrants are likely to become reliant on public benefits. DHS favors immigrants who "rely on their own capabilities," and the resources of family members, sponsors, and private organizations, rather than public resources. The rules propose a new way to determine who is, or is likely to become, a public charge by reviewing the "totality of the circumstances" of immigrant individuals and their families. The "totality of the circumstances" analysis must consider, at a minimum, the applicants age, health, family status, financial resources, and education and skills.

The proposed rule states that a positive financial factor is an immigrant's household income above 250% of the federal poverty level (FPL). Therefore, any individual or a family that cannot prove its income is above 250% of the FPL will automatically be subject to an expanded "public charge" analysis.

One measure of the unreasonableness of DHS's proposed financial factor is that an average American family currently living in the U.S. could not pass the income evaluation. In 2018, the average American family of four's household income is $61,372. This is $1,378 less than the 250% FPL index of $62,750 that DHS has proposed to use for measuring economic self-sufficiency in the public charge determination. By default, any family unit with dependents and any individual making less than $30,350 annually (or $14.59/hour for 40 hours a week over 52 weeks) would be deemed potentially unfavorable and then likely ineligible for admission or adjustment of status. ORI urges DHS to eliminate these elements of the proposed public charge determination.

ORI is likewise concerned that DHS has selected an arbitrary financial threshold for receipt of a "monetizable" public assistance benefit that could lead to negative consideration in the public charge determination. The proposed rule concludes that an immigrant's use of any "monetizable" benefit (cash, SNAP, Section 8 vouchers, rental assistance) that constitutes 15% or more of the Federal Poverty Guidelines (FPG) within a single 12 month time period in the future should trigger negative consideration. According to the example provided by DHS in its filing, an individual's receipt of more than $1,821 in benefits (or $151.75 monthly) in a one-year period would be considered a negative factor and support a DHS determination that the individual should be inadmissible or ineligible for a change in status on public charge grounds. Furthermore, receipt of the same value of 15% FPG ($1,821) in non-monetizable benefits (Medicaid, Medicare Part D Low Income Subsidy, and Public Housing) but within a period of 36 months (three years) would be considered a negative factor and result in DHS considering the individual inadmissible or ineligible for a change in status on public charge grounds. Neither of these standards can be objectively executed because the DHS worker is allowed to "predict the future" on what may or may not happen. Furthermore, the time frame of 12 months and 36 months do not have a clear start date.

Of equal concern is the fact that the proposed standard of 15% FPG would change the existing standard from disqualifying individuals that are "primarily" dependent on cash benefits (50% or more of their

income) to penalizing any applicant who might receive assistance at the specified level from the multiple categories DHS proposes. DHS has not provided substantive reason for why such a drastic change to 15% of the FPG is necessary and is a reasonable change from the established application of the current Public Charge analysis. ORI urges DHS maintain the historical standard for measuring dependency on cash benefits.

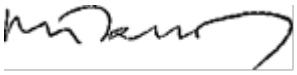
The proposed rule fails to account for the increased economic and social costs that will result when families and individuals eligible for "safety net" programs do not seek or discontinue receiving such assistance in order to avoid the significant negative immigration consequences that would follow DHS' determination that an immigrant may become a public charge. As a result of reduced benefit usage, more children living in the United States will likely experience poverty, go hungry and become homeless. These deprivations directly correlate with increased learning delays, behavioral problems, and health issues for affected children. It is unclear whether DHS has considered in its overall cost analysis the long-term increased public costs of education (including special education), communicable diseases, emergency medical care, and law enforcement that are likely to arise as second order effects of its proposed rule. A full weighing of these costs strongly rebuts the proposed rule's approach of discouraging lawfully present immigrants from securing the support that these safety net programs are intended to provide as immigrants work to build self-sufficiency.

ORI is charged to help its clients by providing needed assistance. This mission will be difficult to fulfill if ORI clients increasingly refuse to access benefits and services out of fear that reliance on these programs will put at risk any future citizenship or family reunification prospects.

Finally, if the rule proceeds in its current form, ORI case managers and others who support immigrants newly arrived in the U.S. will have to be trained extensively on the new rules and will have to proceed with caution – otherwise, their advice may inadvertently threaten a family's ability to stay together or to remain in the U.S. This responsibility presents a particularly daunting challenge in view of the fact that the proposed policy provides no clear lines on how public charge evaluations will be made: while reliance on public benefits is a negatively weighted consideration, the final determination in any individual case is left to the broad discretion of a DHS case officer.

The revised public charge rule that DHS has proposed will place unacceptable social and economic costs on Massachusetts and other states. ORI urges DHS to withdraw its proposed rule in light of our country's long history as a place where immigrants are welcome and where basic government assistance helps newly-arrived immigrants to become self-supporting and productive contributors to society.

Sincerely,



Mary Truong
Executive Director/State Refugee Coordinator

CC: Marylou Sudders, Secretary, Executive Office of Health and Human Services

Commonwealth of Massachusetts
DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT
Charles D. Baker, Governor ◆ Karyn E. Polito, Lt. Governor ◆ Janelle Chan, Undersecretary

December 10, 2018

Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529–2140.

Re: Comments on Inadmissibility on Public Charge Grounds Rule Docket No. USCIS-2010-0012

Dear Ms. Deshommes:

The Massachusetts Department of Housing and Community Development (DHCD) appreciates the opportunity to comment on the rule proposed by the Department of Homeland Security ("DHS") to address "Inadmissibility on Public Charge Grounds." **DHCD and the Commonwealth of Massachusetts are opposed to the changes in policy reflected in the proposed rule and strongly urge DHS to withdraw the proposed rule.** The proposed rule will have a significant adverse impact on the population that DHCD serves—including many immigrants lawfully present in our country—and more broadly on the public welfare and economy of the Commonwealth. **Massachusetts values the immigrant community's role in making our state a vibrant and competitive commonwealth and believes the proposed changes to the public charge rule would harm these interests by discouraging lawful Massachusetts residents from accessing basic supports such as medical care and other programs intended to assist them in maintaining economic self-sufficiency.** At a minimum, DHCD recommends that DHS exclude all housing-related subsidies from the benefits included as "public benefits" under any final rule concerning the public charge determination.

Introduction

In determining whether an individual is, or is likely to become, a "public charge" and therefore inadmissible to the United States or ineligible for legal permanent residency, the Federal government has long recognized a distinction between cash benefits such as Transitional Assistance for Needy Families and non-cash benefits such as housing assistance. In the context of housing, the policy decision not to weigh receipt of non-cash housing benefits in the public charge determination has appropriately accounted for the unfortunate truth that many low-wage workers often do not earn enough to pay the market cost of housing. This is true as much for citizens as for recent immigrants lawfully present in the country. By dispensing with this distinction, the proposed rule ignores the critical role that immigrant workers play in

the United States economy by performing essential functions in our society. It also ignores the difference between "welfare"-style public assistance and benefits that support large numbers of working households in an economy where increases in housing costs have far outstripped wage increases.

State support for housing costs is a crucial support for all low and even moderate wage workers. In all but a few states, the hourly wage that a worker must earn in order to afford to rent a two-bedroom apartment at the HUD-determined "fair market rent (FMR)"[1] (commonly referred to as the "housing wage") is at least $15.00 per hour. In Massachusetts, the average "housing wage" required to afford a two-bedroom rental apartment is $22.90. In fact, there is no state, metropolitan area or county in the United States where a worker earning the Federal or applicable state minimum wage and working 40 hours per week can afford to rent a two-bedroom apartment. A minimum wage worker in Massachusetts would need to work at least 104 hours per week to afford a 2-bedroom apartment. In high-cost areas of the state, the "housing wage" is even higher; in the Boston area, even in a household with two household members working two full-time minimum wage jobs *each*, the combined household income would be insufficient to afford a two-bedroom apartment at the HUD-determined fair market rent.[2]

Applicability to DHCD Programs

DHCD administers numerous federal housing programs that would be treated as public benefits under the proposed rule. For example, DHCD provides federal rental assistance to approximately 22,000 households through the Section 8 Housing Choice Voucher Program. DHCD also oversees the operations of approximately 240 local housing authorities, most of which also administer federal housing subsidies in addition to state housing subsidies. Additionally, the proposed rule may extend to other present or future DHCD programs, if the term "general assistance cash benefits"[3] were construed to include certain short-term assistance that DHCD provides to or on behalf of homeless families or families at risk of homelessness.

Impact on Public Welfare and State Programs and Services

The proposed rule will increase homelessness and family separation amongst immigrant families and citizen children by discouraging immigrants who are lawfully present in the United States from relying on support to which they are fully entitled and that are intended to promote and sustain economic self-sufficiency. This disenrollment will have a range of negative impacts on the Commonwealth and the country.

Immigrants in Massachusetts tend to be concentrated in either low- or high-wage jobs. At the low-wage end of the spectrum, large numbers are employed in the Massachusetts health care system, where they work in positions such as home health aides and nursing assistants. A large number of immigrants working for lower wages in Massachusetts perform jobs such as building and grounds cleaning and maintenance.[4] For these individuals and their families, many of which include United States citizen children, disenrollment from housing benefits to avoid "public charge" status under the proposed rule can be reasonably expected to increase financial instability and over time substantially increase homelessness.

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[1] The United States Department of Housing and Urban Development determines the FMR annually, typically at the 40th percentile of gross rent (rent plus an allowance for tenant-paid utilities) (50th percentile in certain high-cost markets). In periods of rapid housing cost escalation, FMR may lag behind actual market rents.

[2] National Low Income Housing Coalition, *Out of Reach*, available at https://nlihc.org/sites/default/files/oor/OOR_2018.pdf.

[3] An individualized benefit to households who do not qualify for major assistance programs and whose benefits from other assistance programs are insufficient to meet basic needs.

[4] See The Immigrant Learning Center, *Massachusetts Immigrants by the Numbers: Demographic Characteristics and Economic Footprint*, available at http://www.ilctr.org/wp-content/uploads/2017/09/ILC-MA-Immigrants-By-the-Numbers.pdf.

This, in turn, will increase the financial and administrative burden on the Commonwealth, as well as local housing and service delivery systems, to provide emergency shelter. While this situation is particularly dire in Massachusetts, where households have little or no ability to seek alternative housing in the private marketplace, the disparity between the real cost of housing and the cost affordable to a low-wage full-time worker is a problem nationwide.

Increased homelessness, as well as the overcrowding that may occur if households "double up" to avoid sleeping in cars, bus stations or other places not intended for human habitation, will also increase public health and safety risks along with other costs associated with homelessness. Access to good housing is well recognized as a "social determinant of public health" based on supporting research. Unsurprisingly, families and individuals without stable housing are more likely to utilize emergency services and require hospitalizations.[5] The trauma and destabilization of family separation that may result from households relinquishing housing assistance in order to avoid a "public charge" status is only likely to augment health stressors and the need for responsive services.

By discouraging lawfully present immigrant families from accessing housing assistance to which they are entitled, the proposed rule would also adversely impact both children who are displaced due to homelessness and the local educational systems serving those children. Under the federal McKinney-Vento Act, students experiencing homelessness have the right to continue attending their school of origin, and the lead educational agency in which the school or origin is located must provide or arrange the child's transportation to and from the school of origin.[6] The impact on local education systems will be particularly felt in communities where large numbers of immigrant households reside.

The proposed rule has the potential as well to adversely affect both DHCD and housing providers across the state if large numbers of immigrants withdraw from housing programs precipitously in order to preserve their legal rights to seek a change in immigration status. Such a withdrawal would destabilize housing providers on account of loss of rental income and the administrative burdens associated with move-outs, apartment turnover, and income-certifying new residents. This would potentially reverse or weaken longstanding efforts by the Commonwealth and housing authorities to develop, maintain, and support the stock of affordable housing that is critical to the stability of low-wage working households and, ultimately, the economy of the Commonwealth.

DHCD urges that DHS withdraw the proposed rule in view of its likely negative consequences for the wellbeing of immigrant families lawfully present in the United States and its destabilizing effects on the Commonwealth and other similarly situated states.

Sincerely,

Janelle Chan, Undersecretary

cc: Secretary Jay Ash
Secretary Marylou Sudders

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[5] See e.g., "Social Determinants of Health, Key Concepts," WORLD HEALTH ORGANIZATION, available at http://www.who.int/social_determinants/final_report/key_concepts_en.pdf?ua=1; Housing is the Best Medicine: Supportive Housing and the Social Determinants of Health, CORPORATION FOR SUPPORTIVE HOUSING, available at https://d155kunxf1aozz.cloudfront.net/wp-content/uploads/2014/07/Social DeterminantsofHealth_2014.pdf.

[6] For further discussion, see. e.g., "McKinney-Vento Law into Practice Brief Series: Transporting Children and Youth Experiencing Homelessness, NATIONAL CENTER FOR HOMELESS EDUCATION, available at https://nche.ed.gov/downloads/briefs/transportation.pdf (citing to 42 U.S.C. § 11432(g)(3)(A) and 42 U.S.C. § 11432(g)(1)(J)(iii)(I)).